

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

November 18, 2008

Via Electronic Transmission

Robert King Steel
President and Chief Executive Officer
Wachovia Corporation
301 South College Street
Charlotte, NC 28288-0570

Dear Mr. Steel:

I am writing in connection with an investigation into the facts and circumstances leading to the Treasury Department's issuance of Notice 2008-83 ("Notice") on September 30, 2008.

The Notice changes the rules governing the deductibility of losses under section 382(h) of the Internal Revenue Code as it applies to banks. While section 382 provides Treasury the authority to issue regulations to implement section 382, Treasury's action raises significant questions about whether it exceeded implementing authority by attempting to change the law. Prior to the Notice, the amount of income that an acquiring bank could shelter in order to be able to absorb the losses of a bank it acquired was limited. Now, the Notice allows an acquiring bank to use an acquired bank's losses to shelter its income without limitation.

There has been public speculation regarding the appearance of preferential treatment created by the Treasury Department's decision to issue Notice 2008-83. The Notice, issued just days before Congress voted on the Emergency Economic Stabilization Act of 2008, appears to have had the effect of benefiting Wachovia Corporation executives and Wells Fargo. Treasury's issuance of the Notice apparently enabled Wells Fargo to take over Wachovia despite a pending bid from Citibank. Without the issuance of the Notice, Wells Fargo would have only been able to shelter a limited amount of income. Under the Notice, however, Wells Fargo could reportedly shelter up to \$74 billion in profits. It also potentially enabled Wachovia's senior executives to qualify for parachute payments that may not have been available under the Citibank deal.

The facts and circumstances surrounding the issuance of the Notice, particularly as it relates to Wells Fargo's purchase of Wachovia Corporation, raise concerns about the independence and merits of the decision. Accordingly, I request that you provide the Finance Committee with all records relating to communications pertaining to the issuance of Notice 2008-83 between Treasury officials, individuals at Wells Fargo, and/or Wachovia Corporation or their representatives.

In cooperating with the Committee's review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committee.

Thank you in advance for your assistance in this matter and should you wish to discuss this request in further detail please contact Ellen McCarthy and Jason Foster of my staff at (202) 224-4515. I would request that you provide this information to me by no later than December 2, 2008. Any formal correspondence should be sent electronically in PDF searchable format to Brian_Downey@finance-rep.senate.gov.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member

Attachment

GENERAL INSTRUCTIONS

1. The term “Wachovia Corporation” means its corporation, or one or more of its divisions, subsidiaries or affiliates, or related entities, including any other companies or corporations with which “Wachovia Corporation” entered into a partnership, joint venture or any other business agreement or arrangement.
2. In complying with this document request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. In addition, produce documents that you have a legal right to obtain, documents that you have a right to copy or have access to, and documents that you have placed in the temporary possession, custody, or control of any third party.
3. No documents, records, data or information requested by the Committee shall be destroyed, modified, removed or otherwise made inaccessible to the Committee.
4. If the document request cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.
5. In complying with this document request, respond to each enumerated request by repeating the enumerated request and identifying the responsive document(s).
6. In the event that a document is withheld on the basis of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
7. Each document produced shall be produced in a form that renders the document susceptible of copying.
8. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, or control.
10. This request is continuing in nature. Any document, record, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
11. All documents shall be Bates stamped sequentially and produced sequentially.

GENERAL DEFINITIONS

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to the following: memoranda, reports, statistical or analytical reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (E-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disc, or videotape. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “records” is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.

3. The terms “relate,” “related,” “relating,” or “regarding” as to any given subject means anything that discusses, concerns, reflects, constitutes, contains, embodies, identifies, deals with, or is any manner whatsoever pertinent to that subject, including but not limited to documents concerning the preparation of other documents.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The masculine includes the feminine and neuter genders to bring within the scope of this document request any information that might otherwise be construed to be outside its scope.
5. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, written, electronic, by document or otherwise, and whether face to face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise. Documents that typically reflect a “communication” include handwritten notes, telephone memoranda slips, daily appointment books and diaries, bills, checks, correspondence and memoranda, and includes all drafts of such documents.